TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 226.

HENRY W. URQUHART, AS SHERIFF OF LEWIS COUNTY, WASHINGTON, APPELLANT,

vs.

THOMAS BROWN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

FILED MARCH 19, 1906.

(20,134.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1906.

1 In the Supreme Court of the United States.

HENRY W. URQUHART, as Sheriff of Lewis County, Washington, Appellant,
vs.
THOMAS BROWN, Appellee.

Transcript.

Upon Appeal from the United States Circuit Court for the Western District of Washington, Western Division, Tacoma.

J. R. Buxton, Esquire, Prosecuting Attorney for Lewis County, Centralia, Washington,
John D. Atkinson, Attorney General, Olympia, Washington,
A. J. Falknor, Esquire, Assistant Attorney General, Olympia, Washington,
E. C. MacDonald, Esquire, Assistant Attorney General, Spokane, Washington,
Robert F. Borthe, Esquire, Assistant Attorney General, Olympia, Washington,
For Appellant.

M. A. Langhorne, Esquire, Chehalis, Washington,
C. H. Forney, Esquire, Chehalis, Washington,
John M. Ponder, Esquire, Chehalis, Washington,
For Appellee.

2 In the United States Circuit Court for the Western District of Washington.

No. 1117.

HENRY URQUHART, as Sheriff of Lewis County, Washington, Appellant,
v.
THOMAS BROWN, Appellee.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Thomas Brown, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, within sixty (60) days from the date of this writ, pursuant to an appeal, duly allowed by the United States Circuit Court for the Western District of Washington, and filed in the Clerk's office of said court on the 10th day of January, A. D. 1906; in a cause wherein Henry W. Urquhart, as sheriff of Lewis County, Washington, is appellant, and you are appellee, to show cause, if any, why the decree rendered against said appellant as in the said appeal mentioned, should not be

corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 19th day of February, in the year of our Lord One thousand nine hundred and six, and of the independence of the United States of America the one hundred and thirtieth.

C. H. HANFORD,
United States District Judge.

3 [Endorsed:] No. — In the Circuit Court of the United States District of —— —— —— —— Division. Henry Urquhart Sheriff etc. *v.* Thomas Brown Defendant Citation Due service of within Citation by receipt of a true copy thereof admitted this 21 day of February 1906. Maurice A. Langhorne Attorney for Thomas Brown Ernest C. Macdonald, The Rookery, Spokane, Wash. Attorney for —— —— Filed U. S. Circuit Court Western District of Washington Feb. 23 1906 A. Reeves Ayres Clerk Sam'l D. Bridges Deputy.

4 In the Circuit Court of the United States for the Western District of Washington.

THOMAS BROWN, Complainant,
vs.
HENRY W. URQUHART, as Sheriff of Lewis County, State of Washington, Respondent.

Application for Writ of Habeas Corpus.

To the Honorable Judges of the above entitled Court:

Humbly complaining, this applicant, Thomas Brown, of Lewis County, State of Washington in the Western District of Washington, respectfully shows that he is illegally imprisoned, detained, confined and restrained of his liberty by the respondent, Henry W. Urquhart, as Sheriff of Lewis County, State of Washington, in the Western District of Washington, in the county jail of said county, at Chehalis, therein.

II.

That the cause and pretense of his said imprisonment, detention, confinement and restraint, according to the best of the knowledge and belief of this applicant is a certain "Order for Committment," bearing date the 9th day of May, 1905, signed by the Hon. A. E. Rice, Judge of the Superior Court of Lewis County, State of Washington, which is hereto attached marked Exhibit "A" and made a part hereof.

III.

That said imprisonment, detention, confinement and restraint are illegal and the illegality thereof consists in this, to-wit:

That the only pretense, according to the best knowledge and belief of this applicant, of such restraint and imprisonment, is the order of

committment aforesaid; that said order grew out of and was
4½ based upon, according to the belief of complainant, a certain proceeding in the Superior Court of the State of Washington for Lewis County, wherein and whereby this complainant was prosecuted by the State of Washington for the crime of murder in the first degree, in a certain cause brought in said court, wherein the State of Washington was plaintiff, and the complanant herein was defendant; and petitioner alleges that on, to-wit, the 24th day of January, 1905, an information was filed in said court by J. R. Buxton, Prosecuting Attorney for said Lewis County, whereby complainant was charged with having committed the crime of murder in the first degree, under the laws of said State, by killing one Charles Brown on the 23rd day of December, 1904, a copy of which said information is hereto annexed marked Exhibit "B" and made a part hereof.

IV.

That thereafter, complainant, who was under arrest and in custody at the time said information was filed, was arraigned in said court and duly entered his plea of "Not Guilty" and thereupon, in due course, the trial of your petitioner on said accusation was set for April 24, 1905, at which time his trial began in said court, Hon. A. E. Rice, Judge of said court, presiding.

V.

That after a fair trial on said charge before a jury duly empaneled and sworn to try said cause, the said jury, having heard the evidence, argument of counsel and the instructions of the court, duly retur-ed to consider of their verdict, and on, to-wit, the 1st day of May, 1905, said jury returned into court with their verdict as follows, to-wit:
"We, the jury, find the defendant not guilty, by reason of insanity," duly signed by their foreman, which verdict was
4¾ duly received by the Judge of said court and was thereupon duly entered upon the records of said Court.

VI.

That immediately after the rendition of said verdict, the Hon. A. E. Rice, Judge aforesaid, ordered and directed the said Henry W. Urquhart, Sheriff of said county, to return complainant to the county jail of said county to await such further orders as said judge might make in the premises, which said order and direction of said judge, the said respondent thereupon obeyed. That at the time of the making of such order and at the time said respondent carried the same into effect, there was no other charge, complaint, information or indictment or any other accusation lodged or pending against complainant herein.

VII.

That complainant was so confined and detained in said jail by said respondent, awaiting the further pleasure of said court, until, to-wit, the 8th day of May, 1905, when said Hon. A. E. Rice, the judge

aforesaid, ordered petitioner to be brought into court to receive and hear what the court should pronounce against him; whereupon complainant, having been brought, as a prisoner into the presence of said judge by said respondent, said judge, without any hearing or trial whatsoever, without any accusation having been theretofore made against complainant, and without giving complainant any opportunity to be heard in his own behalf, but arbitrarily, and of his own motion, announced the judgment of the court to be that on account of the acquittal of complainant by the jury by reason
5 of insanity at the time of the alleged killing of Charles Brown on December 23rd, 1904, complainant was, on said 8th day of May, 1905, manifestly dangerous to the peace and safety of the community, and adjudged that he should be confined in the county jail of Lewis County, Washington, at Chehalis, for an indefinite period, to-wit, until the further order of the court. And thereupon, said judge ordered the prosecuting attorney to prepare said order for commitment, which was accordingly done and the same signed by said judge on, to-wit, May 9th, 1905, and is herein set out as Exhibit "A" aforesaid.

VIII.

That the alleged reason for detaining said complainant, as announced by said Superior Judge, was by virtue of section 6959 of Vol. II Ballinger's Annotated Code and Statutes of Washington, being sec. 79 of Chapter XXXIII, Laws of 1891, entitled "An Act in relation to prosecutions for public offenses." But complainant alleges that said section of said statute is unconstitutional, null and void, and is contrary to and in violation of the 14th amendment of the Constitution of the United States, particularly to that portion thereof which provides that: "nor shall the state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

IX.

That it is solely by reason of said void and illegal judgment that complainant is deprived of his liberty by said respondent, as sheriff aforesaid, and county jailor of said Lewis County, and who now holds and confines complainant by reason thereof.

6

X.

Complainant further alleges that after the order of committment aforesaid, this complainant presented his petition for a writ of *habeas corpus* to the Supreme Court of the State of Washington, wherein complainant raised the question of the unconstitutionality of said section 6959 of Vol. II Ballinger's Annotated Code and Statutes of Washington, as being in contravention of the 14th amendment of the constitution of the United States, and on to-wit, the 30th day of June, 1905, after due notice, said petition was presented and argued before said court on behalf of complainant and on behalf of respondent Henry W. Urquhart, as Sheriff aforesaid, and said Supreme

Court of said State after consideration of said petition and argument of counsel for and against said prisoner, denied said writ of *habeas corpus*, and by its decision and opinion in writing, according to the laws of the State of Washington, filed on, to-wit, July 14, 1905, held and decided that said section 6959 of the statute of the State of Washington aforesaid, was constitutional and did not violate said 14th amendment of the constitution of the United States particularly that portion thereof pointed out by complainant wherein said amendment prohibits any state from depriving any person of life, liberty or property without due process of law.

XI.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, directed to said Henry W. Urquhart, as Sheriff of Lewis County, Washington, may issue in this behalf, so that your petitioner may
7 be forthwith brought before this court to do, submit to, and receive what the law may require.

THOMAS BROWN, *Applicant.*

M. A. LANGHORNE,
C. H. FORNEY,
JOHN M. PONDER,
Attorneys for Complainant.

P. O. Address: Chehalis, Lewis Co., Wash.

8 EXHIBIT "A."

In the Superior Court of the State of Washington for Lewis County.

STATE OF WASHINGTON, Plaintiff,
vs.
THOMAS BROWN, Defendant.

STATE OF WASHINGTON, *County of Lewis, ss:*

It appearing to the court that on the 24th day of January, 1905, J. R. Buxton, Prosecuting Attorney for said Lewis County, duly filed in the office of the Clerk of this court an information in the above entitled cause charging the said defendant, Thomas Brown, of being guilty of the crime of murder in the first degree committed as follows: "The said Thomas Brown in said Lewis County, State of Washington, on, to-wit, the 23rd day of December, A. D. 1904, purposely and of his deliberate and premeditated malice killed one Charles M. Brown by then and there purposely and of his deliberate and premeditated, shooting and mortally wounding the said Charles M. Brown with a rifle which he, the said Thomas Brown, then and there held in his hand contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Washington."

Whereas, said Thomas Brown was duly arraigned in our Superior Court by said prosecuting attorney and on such arraingnment ap-

peared by his counsel, M. A. Langhorne and C. H. Forney, and the said information being read to him said Thomas Brown pleaded "Not guilty" to the same. Certain other proceedings were had in said case and the said Thomas Brown by his attorney consented that the case be set down for trial for April 24, 1905.

9 On said date and subsequent days the jury was examined and finally impaneled and sworn and many witnesses were sworn both for the state and for the defendant. The trial occupied about seven days. At the close of the trial the jury was duly charged by the court and returned in the care of two bailiffs, both of whom were sworn according to law to take charge of the jury. Now on the 8th day of May, 1905, comes J. R. Buxton, Prosecuting Attorney for Lewis County, Washington, and said defendant Thomas Brown is brought to the bar of the court with his counsel, M. A. Langhorne, Esq., the said jury impaneled for trial of said case having on the 1st day of May, 1905, delivered their verdict in writing stating that said Thomas Brown was "Not guilty by reason of insanity," which verdict was read in open court on the 1st day of May, 1905, when same was delivered and was duly recorded by the clerk of this court and entered upon the records of this court. The said Superior Court, by reason of said verdict and all the evidence and proceedings in the trial and the demeanor of def't finds that the discharge or going at large of said Thomas Brown would be and is considered by the court as manifestly dangerous to the peace and safety of the community. The court therefore orders that said Thomas Brown be and he is hereby committed to the county jail, said prison being the county jail of said Lewis County at Chehalis, Washington, until the further order of this court. It is further ordered and decreed that he, the said Thomas Brown, be and he is now committed to the custody of the Sheriff of Lewis County, Washington, to carry this judgment into execution, and this order of the court is his warrant for executing the same.

10 Dated at Chehalis, Washington, May 9th, 1905.

A. E. RICE,
Superior Judge.

Endorsed: Received and filed May 9th, 1905. H. H. Swofford, Clerk Superior Court.

EXHIBIT "B."

In the Superior Court of the State of Washington for Lewis County.

No. 2924.

THE STATE OF WASHINGTON, Plaintiff,
vs.
THOMAS BROWN, Defendant.

Information.

Comes now J. R. Buxton, Prosecuting Attorney for the said Lewis County, State of Washington, the said Superior Court of said Lewis

County being in session and the Grand Jury for said county not being in session, and now here said prosecuting attorney gives said Superior Court to understand and to be informed by this information that the above named Thomas Brown is guilty of the crime of murder in the first degree, committed as follows: The said Thomas Brown in said Lewis County, Washington, on to-wit, the 23rd day of December, A. D. 1904, purposely and of his deliberate and premeditated malice killed one Charles M. Brown by then and there purposely and of his deliberate and premeditated malice shooting and mortally wounding the said Charles M. Brown with a rifle which he, the said Thomas Brown, then and there held in his hand,
11 contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Washington.

Dated at Chehalis, Lewis County, Wash. this 24th day of January, 1905.

J. R. BUXTON,
Prosecuting Attorney for Lewis County.

(Duly verified.)

Endorsed: Rec'd and filed this 24th day of January, 1905. H. H. Swofford, Clerk.

STATE OF WASHINGTON, *County of Lewis, ss:*

I, Thomas Brown, being first duly sworn, depose and say that I am the Petitioner in the above entitled proceeding, and that the foregoing petition is true, as I verily believe.

THOMAS BROWN.

Subscribed and sworn to before me this 7th day of July, 1905.
[NOT'L SEAL.] M. A. LANGHORNE,
Notary Public for the State of Washington residing at Chehalis.

[Endorsed:] In the Circuit Court of the U. S. for the Western District of Washington. No. 1117. Thomas Brown, Plaintiff, *vs.* Henry W. Urquhart, as Sheriff of Lewis County, Defendant. Filed U. S. Circuit Court, Western Dist. of Wash., July 17, 1905. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

12 In the Circuit Court of the United States for the Western District of Washington.

THOMAS BROWN, Complainant,
vs.
HENRY W. URQUHART, as Sheriff of Lewis County, State of Washington, Respondent.

Order to Show Cause.

And now, on this 18th day of July, 1905, on the filing and reading of the petition of Thomas Brown, praying that a writ of *habeas*

corpus issue out of this court directed to the respondent, requiring him to make return as to the cause of the detention of said Thomas Brown,

It is Ordered that the said respondent Henry W. Urquhart, as Sheriff of Lewis County, Washington, show cause before this Court on Tuesday, the 25th day of July, 1905, at the opening of court on said day why a writ of *habeas corpus* should not issue in this proceeding.

It is Further Ordered that a certified copy of this order, together with a copy of the petition filed herein be immediately served upon the respondent.

Done in open court this 18th day of July, A. D. 1905.

C. H. HANFORD, *Judge.*

Endorsed: In the Circuit Court of the United States for the Western District of Washington. No. 1117. Thos. Brown. *Habeas Corpus.* Order to show cause. Filed U. S. Circuit Court Western Dist. of Washington, July 18, 1905. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

13 In the Circuit Court of the United States for the Western District of Washington, Northern Division.

THOMAS BROWN, Complainant,

vs.

HENRY W. URQUHART, as Sheriff of Lewis County, State of Washington, Respondent.

Demurrer.

Comes now the defendant and respondent and demurs to the petition of the relator for the following reasons and upon the following grounds:

I.

That the plaintiff has no capacity to sue or maintain this action.

II.

That the court does not have jurisdiction to inquire into the cause of the detention under the circumstances set forth in the relator's writ.

III.

That the same does not state facts sufficient to entitle the relator to any relief.

IV.

That the relator's remedy is by appeal.

J. R. BUXTON,
Prosecuting Attorney in and for Lewis County, Washington,
E. C. MACDONALD,
Assistant Attorney General,
Solicitors for Respondent, H. W. Urquhart, as Sheriff of Lewis County, Washington.

I hereby certify that in my opinion the foregoing demurrer is good in point of law and not interposed for delay.

E. C. MACDONALD,
Of Counsel for Respondent.

Endorsed: In the Circuit Court of the Western District of Washington. No. 1117. Thos. Brown *v.* H. W. Urquhart, as Sheriff of Lewis County. Filed U. S. Circuit Court, Western Dist. of Washington, July 25, 1905. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

In the Circuit Court of the United States for the Western District of Washington, Northern Division.

THOMAS BROWN, Complainant,
vs.
HENRY W. URQUHART, as Sheriff of Lewis County, State of Washington, Respondent.

Answer to Petition for Writ of Habeas Corpus.

Comes now the Respondent, saving and reserving unto himself the benefit of all exceptions to the manifold errors and imperfections in said petition contained. For answer to so much thereof as he is advised it is necessary or material for him to answer unto it is averred:

I.

Respondent says that it is not true that the complainant is illegally imprisoned, detained, confined or restrained of his liberty by respondent.

II.

Admits that said Thomas Brown, relator herein, is detained by the respondent, H. W. Urquhart, as Sheriff of Lewis County, Washington, in the county jail of Lewis County, at Chehalis, Washington, and admits that said detention is under and by virtue and in accordance with the order of the Superior Judge in and for the State of Washington for Lewis County, a copy of which order is indicated as exhibit "A" and made a part of relator's petition; and further admits that the facts and recitals in said exhibit "A" represent and indicate the proceedings had prior to the making of said order by the said Superior Judge. The respondent admits also that he is not detaining said relator by any other writ or order save and except by virtue of said order designated as exhibit "A" attached to relator's petition.

III.

The respondent further alleges that at the time of the trial of the relator upon the information charging him with murder in the first degree for the killing of his father, Charles M. Brown, December 23,

1904, that the relator pleaded in defense of said killing insanity caused by epilepsy, cruel treatment by said father, Charles M. Brown, towards the relator, and the degeneracy of said Charles M. Brown, deceased, prior to the birth of the relator, and offered proof during the trial of a continuous and permanent insanity produced by said facts, and that during the trial of the relator for such killing the demeanor of the relator appeared consistent with said claim of general insanity; that upon the trial of said criminal case complainant admitted the charge of murder upon which he was tried, and interposed no other defense than that of mental incapacity and insanity absolving him from the responsibility of said murder.

IV.

The respondent further alleges that the said Thomas Brown is a minor under the age of 21 years.

V.

That the complainant herein heretofore filed his petition in the Supreme Court of the State of Washington for a writ of *habeas corpus* upon the same grounds as are set forth in the petition herein and said petitions are identical in every particular; that the respondent herein duly made return and the matter was fully argued before the said Supreme Court of the State of Washington; that thereafter the Supreme Court, in a written opinion, denied the petition for a writ of *habeas corpus*, a duly authenticated copy of which decision is hereto annexed and made a part hereof as though fully set forth herein.

17 VI.

That the mental condition and capacity of the complainant at this time is in no wise different or improved than on the 23rd day of December, 1904.

And having thus fully made answer to said bill, this respondent prays to go hence dismissed with costs.

J. R. BUXTON,
Prosecuting Attorney of Lewis County,
E. C. MACDONALD,
Assistant Attorney General,
Solicitors for Respondent, Sheriff of Lewis County.

UNITED STATES OF AMERICA, *Western District of Washington, ss:*

Henry W. Urquhart, respondent in the above cause, having read the foregoing answer and being duly sworn, do say that the matters and things contained in said answer are true.

H. W. URQUHART.

Subscribed and sworn to before me this 25th day of July, 1905.

SAM'L D. BRIDGES,
Deputy Clerk U. S. Circuit Court,
Western District of Washington.

18 No. 5723.

Filed July 14th, 1905.

In the Matter of the Application of THOMAS BROWN for a Writ of *Habeas Corpus.*

The petitioner made original application in this Court for a writ of *habeas corpus,* directed to the sheriff of Lewis County. He asserts that he is unlawfully detained and imprisoned. His petition shows that he was regularly tried in the Superior Court of said county on the charge of murder in the first degree, to which charge he had interposed the plea of not guilty. The verdict returned was as follows:

"We, the jury, find the defendant not guilty, by reason of insanity."

Immediately after the return of the verdict, on the 1st day of May, 1905, the trial court ordered the sheriff to return the petitioner to the county jail to await the further order of the Court. He was accordingly detained in jail until the 8th day of said month, when the trial judge ordered him to be brought into court. The petition alleges that the Court thereupon, without any hearing or trial, and without giving the petitioner any opportunity to be heard in his own behalf, arbitrarily and of its own motion announced that because of the verdict of the jury, which established that the petitioner was not guilty by reason of insanity, the Court considered that his discharge and going at large would be manifestly dangerous to the peace and safety of the community. It is further shown that, for the above reasons, an order was entered to the effect that the petitioner shall be by the sheriff confined in the county jail until the further order of the Court. The sheriff made return to the petition by way of answer. The answer avers that the petitioner was charged
19 with murder in the first degree, for the killing of his father; that he pleaded and urged as a defense to said charge insanity caused by epilepsy, cruel treatment by his father, and the degeneracy of the latter prior to the birth of the petitioner; that he offered proof during the trial of continuous and permanent insanity from said causes, and that his demeanor during the trial appeared to be consistent with his claim of general insanity. The above alleged facts are not controverted by the petitioner.

The Court acted on the authority of a statute of this state which is set forth in sec. 6959, 2 Bal. Code. It is as follows:

"When any person indicted or informed against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the Court manifestly dangerous to the peace and safety of the community, the Court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds, with surety to the satisfaction of the Court, conditioned that he shall be well and securely kept, otherwise he shall be discharged."

The petitioner contends that the statute violates the following por-

tion of the fourteenth Amendement to the Constitution of the United States:

"nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It is further insisted that the statute violates the following provisions of Sec. 3, 14, 21 and 22, of Art. 1, of our State Con-
20 stitution:

"SEC. 3. No person shall be deprived of life, liberty, or property without due process of law."

"SEC. 14. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted."

"SEC. 21. The right of trial by jury shall remain inviolate."

"SEC. 22. In criminal prosecutions, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; * * *"

Has the petitioner been deprived of due process of law in the premises? He was tried before a jury to whom he himself submitted the issue that he was insane when the crime was committed. He was permitted to fully introduce his evidence upon that subject, and the jury were instructed as to their duty in the premises. The verdict returned was in his favor upon the issue which he tendered, and he was therefore accorded due process of law and the right of trial by jury upon that subject. The jury found that he was insane, and it was the manifest duty of the court to enter some kind of a judgment upon the finding of the jury. The petitioner erroneously assumes that it was a judgment entered in a new and original proceeding without due process of law and without opportunity for a hearing. It was, however, a judgment rendered upon the verdict of a jury which had been regularly returned in a proceeding wherein
21 all constitutional rights had been accorded. Should it have been a judgment of discharge, according to petitioner his liberty? He does not allege that he is now sane. The solemn verdict of a jury, after due trial, establishes that he was insane when the killing occurred. The record before us shows that the character of insanity considered was not of a temporary sort, but was rather progressive and permanent in its nature, be reason of epilepsy and congenital conditions.

"The presumption being that general insanity once shown to exist still continues unless of a temporary sort, like the delirium of drunkenness or a fever, the burden of the proof to establish a lucid interval or mental restoration rests upon the party who asserts it."

Schouler on Wills, (3rd ed.), Sec. 189, and cases cited.

In the chapter on the subject of Insanity, in Vol. 16, Am. & Eng. Enc. of Law, (2nd ed.), under the discussion of the continuance of insanity of a permanent nature, at page 604 of said volume, the following statement of the rule as to presumption is made:

"When habitual insanity in the mind of the person whose act is in question is once established, then the party who would take advantage of the fact or restoration to a sane condition, or of an interval of reason, must prove it, for insanity of that character is presumed to continue until the contrary is shown."

Decisions from twenty-six of the American States are cited in support of the above text, as well as a long list of English decisions. With such an array of citation, it would seem that the rule is well established and that a review of the decisions is unnecessary. We have examined a number of the authorities cited, and find that they fully sustain the rule announced by the textwriter, that when
22 insanity of a permanent character is once established, it is presumed to continue, and the presumption prevails until the contrary is shown, the burden of showing which is upon him who asserts sanity. Therefore, inasmuch as it was a fact established after a full hearing, that the petitioner was insane at the time of the homicide, the presumption is that the same condition continues, and the burden is upon him to show to the contrary. The record does not show that he has ever offered to make such showing to the court below, but rather that he demands his release as an absolute right.

We have thus seen that, as to the issue of insanity, the petitioner was accorded the constitutional rights of due process of law, trial by jury and the privilege of appearing and presenting his case in person and by counsel. The additional constitutional objection urged is that no cruel punishment shall be inflicted. The Statute authorizes the court, among other things, to commit one acquitted by reason of insanity to prison. No particular prison is specified, and it may be reasonably inferred that any prison coming within the committing jurisdiction of the court trying the cause may be selected, such as the county jail of the proper county, or the state penitentiary. In this instance the commitment was to the county jail. May the State, in the exercise of its sovereignty and in its endeavor to protect its people from dangerous insane characters, provide for their confinement in a prison? It is the policy of the state to confine such persons, but it is ordinarily done in an asylum and not in a prison so called. We know of no reason, however, why the state may not classify insane persons and require that those whose dangerous tendencies have been manifested by the actual commission of
23 crime shall, after a full hearing establishing the fact of insanity, be confined in prison while that condition continues. While confinement of any character may in a sense contain elements of cruelty, yet the safety of the people requires that such persons shall be confined.

It is urged that the order of the court is void for uncertainty, in that it is indefinite as to time. The imprisonment is to continue until the further order of the court. The order conforms to the statute in that particular. No time is specified in the statute for the duration of the imprisonment. In the nature of the subject treated by the statute it must be so. It was the undoubted intention of the legislature that imprisonment shall not be continued after restoration to sanity, and that the court shall so retain control of its order in

the premises that it may afterwards modify it to suit changed conditions of mind or body as they may be made to appear. Such an order is analogous to one disposing of the custody of the children in a divorce proceeding, which is made to continue until further order of the court and subject to modification with changed conditions. Although the fact of insanity has been regularly established, and that condition is presumed to continue until the contrary is shown, yet the petitioner has the undoubted right at any time to assert that he is restored to sanity and to demand that the court shall duly investigate that subject. The statute in no way attempts to prevent such a demand upon his part, and cannot be held to be invalid on the ground that it prevents him from exercising such privilege. The petitioner cites Underwood *v.* People, 32 Mich. 1, in support of his contention against this legislation; but an examination of that case discloses that the Michigan statute provided that one acquitted on the ground of insanity should remain confined in an asylum un-
24 til an investigation as to his restoration should be set in motion by the prison inspectors. The Court said: "It practically leaves the liberty of the person confined to depend upon the uncontrolled pleasure of the inspectors." Under that statute the prisoner could take no step on his own initiative, but was left entirely to the will of others. Such a provision manifestly violated a personal right But our statute makes no such attempt to prevent the exercise of a fundamental privilege. The petitioner quotes extensively in his brief from a note in Cooley on Torts, (2nd Ed.), pages 206-7. The quotation does not, however, conflict with our argument above that with the presumption of insanity continuing, confinement is enforcible when the law does not attempt to prevent a judicial investigation as to restored sanity, and which may be initiated at the pleasure of the one confined.

We find no constitutional objections to the statute, and the order of the court is in strict conformity with its provisions. For the foregoing reasons, we think the petitioner has not shown sufficient grounds for his discharge, and the writ is denied.

HADLEY, *J.*

We concur:

MOUNT, *C. J.*
FULLERTON, *J.*
CROW, *J.*
REEDKIN, *J.*
ROOT, *J.*

25 STATE OF WASHINGTON, *County of Thurston, ss:*

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct copy of the Opinion of the Court, as the same was filed on the 14th day of July, 1905.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, this 24th day of July, 1905.

C. S. REINHART, *Clerk.*

[Seal of the Supreme Court, State of Washington.]

Endorsed: In the Circuit Court of the Western District of Washington. No. 1117. Thomas Brown *v.* H. W. Urquhart, as Sheriff of Lewis Co. Filed U. S. Circuit Court, Western District of Washington, July 25, 1905. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

26 In the Circuit Court of the United States for the Western District of Washington.

THOMAS BROWN, Complainant,
vs.
HENRY W. URQUHART, as Sheriff of Lewis County, State of Washington, Respondent.

Reply to Answer and Return of Respondent.

And now comes the complainant and by his attorneys, M. A. Langhorne, Esq., and Messrs. Forney & Ponder, and for reply to the answer and return of the said respondent, or so much thereof as he is advised that it is material for him to reply to, says:

1. That he denies the sixth paragraph of said answer and return, and the whole and every part thereof.

MAURICE S. LANGHORNE,
C. H. FORNEY,
JOHN M. PONDER,
Solicitors for Complainant.

STATE OF WASHINGTON, *County of Pierce, ss:*

M. A. Langhorne being first duly sworn says: That he is one of the solicitors for the complainant in the above entitled matter; that he has read the foregoing reply, knows the contents thereof and believes the same to be true. That he makes this verification for the reason that said complainant is not now within the County of Pierce, but is confined in the county jail of Lewis County in the cus-
27 tody of respondent and is unable to be in said county at the present time.

MAURICE S. LANGHORNE.

Subscribed and sworn to before me this 25th day of July, A. D. 1905.

SAM'L D. BRIDGES,
United States Commissioner District of Washington.

[Seal United States Commissioner District of Washington. Sam'l D. Bridges. Commission expires July 22nd, 1907.]

Endorsed: In the Circuit Court of the United States for the Western District of Washington. No. 1117. Thos. Brown, *Habeas Corpus.* Reply. Filed U. S. Circuit Court Western District of Washington. July 25, 1905. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

28 United States Circuit Court, Western District of Washington, Western Division.

No. —.

Filed Aug. 8, 1905.

THOMAS BROWN, Petitioner,
v.
H. W. URQUHART, as Sheriff of Lewis County, Respondent.

Opinion.

Hearing pursuant to a rule upon the respondent to show cause why a writ of *habeas corpus* should not issue to deliver the petitioner from imprisonment alleged to be without due process of law and in violation of the fourteenth Amendment to the Constitution of the United States. For cause against allowance of the writ the respondent demurred to the petition, and also filed an answer alleging that the questions involved had been adjudicated by the Supreme Court of the State of Washington in a similar proceeding instituted by the petitioner for a writ of *habeas corpus;* also alleging other facts to justify detention of the petitioner. Demurrer overruled and answer held to be insufficient.

MAURICE A. LANGHORNE,
C. H. FORNEY,
Attorneys for Petitioner.
E. C. MACDONALD,
Assistant Attorney General,
J. R. BUXTON,
Pros. Att'y for Lewis County, for Respondent.

HANFORD, *District Judge:*

The petitioner was tried before the Superior Court of the State of Washington for Lewis County, and a jury, upon an information charging him with the crime of murder, and his plea of "not guilty;" resulting in a verdict of acquittal on the ground of
29 insanity, and thereafter without any further inquiry or proceedings, the Superior Court rendered the following decision and judgment;

"The said Superior Court by reason of said verdict and all the evidence and proceedings in the trial and demeanor of defendant, finds that the discharge or going at large of Thomas Brown would be, and is considered by the court as manifestly dangerous to the peace and safety of the community. The Court, therefore, orders that said Thomas Brown be, and he is hereby, committed to the county jail of said Lewis county, at Chehalis, Washington, until the further order of this Court."

The petitioner, having been incarcerated in the jail of Lewis County pursuant to said judgment, applied to the Supreme Court

of the State for discharge from imprisonment by a writ of *habeas corpus*, and relief was refused not on the ground of any informality in the application, but for the reason that in the judgment of the court he was lawfully committed and held, and his continued imprisonment was not a deprivation of liberty without due process of law or of any right guaranteed by the Constitution of the United States, the Constitution of the State of Washington, or the law of the land.

The verdict is a conclusive determination of the only question submitted to the jury, viz., whether the defendant is guilty or not guilty of the crime charged in the information against him, and being purged of criminality the power of the court in which he was tried to imprison him depended entirely upon facts and conditions existing subsequent to the acquittal which necessarily could not have been comprehended in the verdict. Applications to the federal courts by convicts for writs of *habeas corpus* which are ob-
30 structive of judicial proceedings under state laws, are generally viewed with disfavor and denied, even when supported by averments of deprivation or rights guaranteed by the national constitution or laws, if there is a way open for the correction of errors to their prejudice by a review of the proceedings in any court having appellate jurisdiction. It is now settled that in such cases the federal courts are required to exercise discretion, and may with propriety leave an applicant who has been convicted of a heinous crime to pursue his remedy by a writ of error or appeal. *In re* Frederich, 51 Fed. Rep. 747, 149 U. S. 70.

The federal courts, however, are charged with responsibility in the protection of individual rights according to the principles of Magna Charta, which have been adopted as fundamental in our government and incorporated into the national Constitution, and it is part of the business of the federal courts to see that no one can be criminally punished in this county except according to a valid law prescribed for his government by the sovereign authority. U. S. R. S. Secs. 751-2-3; Medley's Case, 134 U. S. 160; Minnesota *v.* Barber, 136 U. S. 313; 15 Am. & Eng. Encyc. of Law (2nd ed.) 139-9; *In re* Davenport, 102 Fed. Rep. 540.

If the imprisonment of the petitioner is in fact a deprivation of his liberty without due process of law in violation of the national Constitution, an adjudication adverse to his contention by the Supreme Court of the state is not conclusive upon the federal courts, for the constitutional prohibition of the use of despotic power to deprive any person of liberty without due process of law applies to the state, and restrains all departments of the state government including the ju-
31 diciary, and forbids compliance with judicial process issued in disregard of the essential requirements of the orderly procedure recognized in this country as constituting due process of law. Therefore, I hold that this court has jurisidction to entertain the petition, and that the previous decision of the question presented here by the Supreme Court of the state is not *res adjudicata*. Yick *v.* Hopkins, 118 U. S. 356. I hold, also that as the petitioner has been acquitted of the only criminal charge preferred against him,

and to which he has been accorded an opportunity to plead, this court, in the exercise of discretion should grant his application for a writ of *habeas corpus* rather than leave him in confinement while seeking relief by the more difficult method of an appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the State, which denied the rights which he claimed under the Constitution of the United States. It is conceded that the only color of authority for the order of the Superior Court for the imprisonment of the petitioner in the jail of Lewis County is a section of the code of this state which reads as follows: "When any person indicted or informed against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends if they shall give bonds, with surety to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged."

2 Ballinger's Annot. Code, Sec. 6959, Pierce's Wash. Code, Sec. 2208.

32 The petition assails this law as being unconstitutional and void, and therefore not valid authority for the determination of the Superior Court pursuant to which the petitioner is imprisoned. I disapprove of that part of the argument made before this court in support of the petition which denounced this law; on the contrary I regard it as legitimate and wise. It would certainly be unwise to discharge from legal restraint a person acquitted of a criminal charge by reason of insanity if, in the opinion of the court in which the case was tried, the defendant by reason of insanity will probably be a menacer to the peace and safety of the community. The court in which such a trial has been concluded is the appropriate tribunal to assume the responsibility of dealing with the defendant, in a manner to protect the community from such mischievous conduct as may be expected to follow his release from restraint. The court, however, in the exercise of the power and discretion, conferred by this statute must dispose of the defendant upon due consideration of the facts and conditions existing subsequent to the time of acquittal, and instead of punishing him by imprisonment for the injurious act constituting the basis of the criminal charge of which he has been acquitted must find sufficient ground for committing him to prison in a then manifest necessity to restrain him in order to protect the community, and the conclusion of the court should be arrived at by means of orderly proceedings, and as a result of a judicial hearing, in which the defendant shall have a full opportunity to submit a legal defense if he has one. It is my opinion that the constitutionality of this law depends upon the true interpretation of its provisions. If this statute must be construed, as it seems to have been by the Supreme Court of this state, as a law authorizing the judge of the trial court to commit a defendant to jail after a verdict

33 of acquittal on the ground of insanity, without a new arraingnment upon a formal complaint of information setting

forth the specific facts constituting cause for committing him to jail, and an opportunity given to controvert the averments of such complaint or information, or interpose a lawful defense, it is in my opinion unconstitutional and void. But I deem such an interpretation of the law to be unwarranted. The authority to commit to prison conferred upon the court, by this statute, is predicated upon the rendition of a verdict of acquittal on the ground of insanity, and other facts, viz., the actual insanity of the defendant and probability that the peace of the community will be endangered by permitting him to go at large. This point may be more concisely stated thus: The law does not authorize a judgment adverse to the defendant upon the verdict alone. This law is one section of the Criminal Code of this state, originally enacted by the legislature of Washington Territory, at its first session. (See Laws of Washington Territory, 1854, page 121, section 126.) It does not in terms, except cases which may be prosecuted under it from the general provisions of the same statute, intended to ensure orderly proceedings and a fair trial, and conviction preliminary to the rendition of any judgment of the court under which an offender may be imprisoned. To assume that this section confers extraordinary power upon the courts, to condemn a man after he has been acquitted of crime, without an accusation and without a fair trial, requires reconstruction, so that there shall be read into it words, conferring that power, or excepting cases aris-
34 ing under it from the provisions of the same statute prescribing the procedure to be observed in dealing with offenders.

That, however, would be construction of the law, in the sense of building or creating law, by the addition of matter not conceived by the legislature, instead of construing the law in a way to effect the object intended, and the product would be a strange and noxious excrescence upon the jurisprudence of the country. Neither administrative officers, nor the courts, have any authority to construct laws by adding to the statutes, or reading into their provisions new or original ideas. The interpretation of all statutes should be harmonious with the general plan of our government, and the explicit requirements of the constitution, unless the words of the statute plainly express a contrary intention of the legislature. To make my meaning plain, I will for an illustration, refer to Sec. 1856, of Pierce's Code, which is the law defining criminal libel, and prescribing the punishment therefor. Without any suggestion of judicial proceedings, this section declares, that every person who composes, dictates, publishes, or wilfully circulates a libel, or in any way knowingly and wilfully aids or assists in doing so, shall be imprisoned in a county jail. If, by virtue of this particular section of the criminal code of this state sheriffs were authorized to seize violators and imprison them without indictment, arraignment, plea or trial and conviction and sentence duly pronounced by a court of competent jurisdiction, all newspaper men in this state would spend most of their time in jail, and the liberty of the press would soon become a mere phantasm, and to enforce the libel law, in such an unheard of manner, would not be more despotic and subversive of constitutional

rights than would be the substitution of a judge's fiat, condemning an untried victim as a maniac, in place of a judgment ren-
35 dered pursuant to customary and lawful proceedings.

I consider that this law can be administered and full effect given to its provisions according to the intention of the legislature in its enactment, without overstepping the limitations of power ordained by the constitution. Therefore, the court is not required, nor authorized to pronounce it unconstitutional. I also consider that the law was not so administered by the Superior Court in rendering its judgment, and that the imprisonment of the petitioner with sanction of the judiciary of the state, without arraignment, and a fair opportunity to defend himself against charges lawfully preferred, and to produce evidence in his defense is deprivation of liberty by the state, without due process of law, and violates the national constitution, and for that reason his application for a writ of *habeas corpus* will be granted.

C. H. HANFORD, *Judge.*

Endorsed: In the Circuit Court of the United States for the Western District of Washington. Thomas Brown, Petitioner, *v.* H. W. Urquhart, as Sheriff of Lewis County, Respondent. Opinion. Filed U. S. Circuit Court Western District of Washington, Aug. 8, 1905. A. Reeves Ayres, Clerk. Samuel D. Bridges, Deputy.

36 In the United States Circuit Court for the Western District of Washington.

THOMAS BROWN, Complainant,
v.
HENRY W. URQUHART, as Sheriff of Lewis County, Washington, Respondent.

Judgment.

The petitioner herein, Thomas Brown, having made and filed in this Court his petition praying for the issuance of a writ of *habeas corpus* in order that he may be released and discharged from the custody and confinement of the respondent, who is the Sheriff of Lewis County, Washington;

And this Court having on the 18th day of July, 1905, made and entered its order directing the respondent to show cause before this Court on the 25th day of July, 1905 why a writ of *habeas corpus* should not be issued as prayed for by said petitioner, which said order to show cause was duly and personally served upon the respondent herein. On the said 25th day of July, 1905, the said respondent by his solicitors, E. C. MacDonald, Assistant Attorney General of the State of Washington, and J. R. Buxton, Prosecuting Attorney of Lewis County, Washington, filed a demurrer and answer or return to said order to show cause, which said demurrer and return or answer is now on file in the office of the Clerk of this Court;

Said cause was heard upon the petition of the petitioner, the de-

murrer and answer or return of the said respondent. Said cause was presented and argued by Maurice A. Langhorne and C. H. Forney, solicitors for the petitioner, and by E. C. MacDonald, Assistant Attorney General of the State of Washington, and J. R. Buxton, Prosecuting Attorney of Lewis County, Washington, solicitors for the respondent.

37 Whereupon the Court being fully advised in the premises, it is ordered that a writ of *habeas corpus* do issue herein commanding and requiring the respondent to forthwith produce before this Court, at the Court room in the City of Tacoma, the body of the petitioner herein, together with the day and cause of his caption and detention, then and there to do and receive all and singular those things which this Court shall consider.

Whereupon and on the 8th day of August, 1905, came the respondent, and produced in open court the body of the petitioner, and the solicitors for the respective parties, and it being stipulated in open Court by the respective parties and their solicitors that this matter be heard and determined upon the petition, answer, reply and files herein, and the Court having considered the same and being duly advised in the premises, finds that the said petitioner is unlawfully and illegally restrained of his liberty by the respondent, H. W. Urquhart, as Sheriff of Lewis County, Washington, under a void and illegal order of commitment of the Superior Court of Lewis County, Washington, which order or commitment is set out in the petition of the complainant filed in this court.

It is therefore ordered and considered by the Court that the said Thomas Brown be discharged from the custody of the respondent, H. W. Urquhart, as Sheriff of Lewis County, Washington, and that he be freed and released from said illegal restraint and imprisonment.

This judgment is without prejudice to any lawful proceedings which may be hereafter initiated to have the petitioner restrained if he shall be adjudged to be by reason of insanity a dangerous person.

It is further ordered that the petitioner have and recover of and from the respondent his costs herein taxed at the sum of $40.48.

38 It is further ordered that the United States Marshal serve a certified copy of this order upon the said respondent, H. W. Urquhart, as Sheriff of Lewis County, Washington.

To which findings and judgment the solicitors for the respondent except, and pray that the exception be noted.

Done in open Court at the City of Tacoma, the 10th day of January, 1906.

C. H. HANFORD, *Judge.*

O K

M. S. LANGHORNE,
Att'y for Petitioner.

Endorsed: In the Circuit Court of the United States, District of Washington, Western Division. No. 1117. Thomas Brown plain-

tiff *vs.* Henry W. Urquhart as Sheriff of Lewis Co. Defendant. Judgment. Filed U. S. Circuit Court, Western District of Washington Jan. 10, 1906. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

39 In the United States Circuit Court for the Western District of Washington.

No. 1117.

THOMAS BROWN, Complainant,
v.
HENRY W. URQUHART, as Sheriff of Lewis County, Washington, Respondent.

Assignment of Errors.

The Respondent prays an appeal from the final decree of this Court to the Supreme Court of the United States and assigns as error:

I.

That the Court erred in finding that the Complainant was unlawfully or illegally restrained of his liberty by the Respondent, Henry W. Urquhart, as Sheriff of Lewis County, Washington.

II.

That the Court erred in finding that the order of commitment of the Superior Court of Lewis County, Washington, under which the Complainant was committed and held, was void and illegal.

III.

That the Court erred in ordering and decreeing that the Complainant be freed and released from the county jail of Lewis County, Washington, and from the custody of the Respondent.

J. R. BUXTON,
Prosecuting Attorney,
Lewis County, Washington.
JOHN D. ATKINSON,
Attorney General.
A. J. FALKNOR,
Assistant Attorney General.
E. C. MACDONALD,
Assistant Attorney General.
ROBERT F. BORTHE,
Attorney for Respondent.

Endorsed: In the Circuit Court of the United States, Western District of Washington, So. Division. No. 1117. Thomas Brown, Plaintiff, *v.* Henry W. Urquhart as Sheriff, Defendant. Assignment of Errors. Filed U. S. Circuit Court, Western Dist. of Washington Jan. 10, 1906. A. Reeves Ayres, Clerk, Sam'l D. Bridges, Deputy.

40 In the United States Circuit Court for the Western District of Washington.

THOMAS BROWN, Complainant,
vs.
HENRY W. URQUHART, as Sheriff of Lewis County, Washington, Respondent.

Petition for Appeal.

The above named Respondent, conceiving himself aggrieved by the decree made and entered herein on the — day of December, A. D. 1905, in the above entitled cause, does hereby appeal from said order and decree, to the Supreme Court of the Unites States, for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this — day of January, A. D. 1906.

J. R. BUXTON,
Prosecuting Attorney,
Lewis County, Washington.
JOHN D. ATKINSON,
Attorney General.
A. J. FALKNOR,
Assistant Attorney General.
E. C. MACDONALD,
Assistant Attorney General.
ROBERT F. BORTHE,
Assistant Attorney General.

The foregoing claim of appeal is allowed this 10th day of January, A. D. 1906, and bond on appeal is fixed in the sum of $500.00.

C. H. HANFORD,
District Judge.

41 Endorsed: In the Circuit Court of the United States, Western District of Washington, So. Division. Thomas Brown, Plaintiff, *v.* Henry W. Urquhart, as Sheriff, Defendant. Petition for Appeal. Filed, U. S. Circuit Court, Western District of Washington, Jan. 10, 1906. A. Reeves Ayres, Clerk. Sam'l D. Bridges, Deputy.

42 In the United States Circuit Court for the Western District of Washington.

No. 1117.

THOMAS BROWN, Complainant,
v.
HENRY W. URQUHART, as Sheriff of Lewis County, Washington, Respondent.

Bond.

Know all men by these presents, That we, Henry W. Urquhart, as principal, and National Surety Company, a corporation duly organized, created and existing under and by virtue of the laws of the State of New York, with its principal office at Number 346 Broadway, in the City of New York, and duly authorized to transact the business of surety in the State of Washington, and having duly complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds, as surety, are held and firmly bound unto Thomas Brown in the full and just sum of $500.00, to be paid to the said Thomas Brown, his certain attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of January, A. D. 1906.

Whereas, lately in the United States Circuit Court for the Western District of Washington, on the 11th day of August, 1905, in a suit depending in said court, between Thomas Brown, Complainant, and Henry Urquhart, as Sheriff of Lewis County, Washington, Respondent, a decree was entered against said Respondent, and
43 the said Respondent having obtained an appeal and filed a copy thereof in the Clerk's office of said Court, to reverse the decree in the aforesaid suit, and a citation directed to the said Thomas Brown, citing and admonishing him to be and appear at the session of the Supreme Court of the United States, to be holden at the City of Washington, on the — day of November next:

Now, therefore, The condition of the above obligation is such that if the said Henry W. Urquhart shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY W. URQUHART. [SEAL.]
NATIONAL SURETY COMPANY,
By E. C. MACDONALD,
Its Attorney in Fact.
W. S. MCCREA,
Its Attorney in Fact.

The foregoing bond of appeal is hereby approved this 10th day of January, A. D. 1906.

C. H. HANFORD,
District Judge.

Endorsed: In the Circuit Court of the United States, Western District of Washington, So. Div. No. 1117. Thomas Brown, Plaintiff, *v.* Henry W. Urquhart as Def't, Defendant. Bond on Appeal. Filed, U. S. Circuit Court, Western District of Washington, Jan. 10, 1906. A. Reeves Ayers, Clerk. Sam'l D. Bridges, Deputy.

44 UNITED STATES OF AMERICA,
Western District of Washington, ss:

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the Western District of Washington, do hereby certify the foregoing typewritten pages, numbered from 1 to 43, inclusive, to contain a full, true and correct transcript of the record and proceedings in said court in the within entitled cause, as shown by the original files and records of said court at the City of Tacoma, in said District. I also attach and transmit herewith the original citation issued, served and filed in said cause.

Attest my official signature and the seal of the said Circuit Court, at the City of Tacoma, the twenty-sixth day of February, 1906.

[Seal of the United States Circuit Court, Western District of Washington.]

A. REEVES AYRES, *Clerk,*
By SAM'L D. BRIDGES,
Deputy Clerk.

Clerk's fees on transcript, paid by appellant, $59.20—

Endorsed on cover: File No. 20,134. W. Washington C. C. U. S. Term No. 226. Henry W. Urquhart, as sheriff of Lewis county, Washington, appellant, *vs.* Thomas Brown. Filed March 19th, 1906. File No. 20,134.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 226.

HENRY W. URQUHART,
as Sheriff of Lewis County,
Washington,
Appellant,
v.
THOMAS BROWN,
Respondent.

Office Supreme Court, U. S.
FILED.
JAN 21 1907
JAMES H. McKENNEY,
CLERK.

Appeal from the Circuit Court of the United States for the Western District of Washington.

BRIEF OF APPELLANT.

E. C. MACDONALD,
Assistant Attorney General.
Solicitor for Appellant.

JOHN D. ATKINSON,
Attorney General,
A. J. FALKNOR,
Assistant Attorney General,
J. R. BUXTON,
Prosecuting Attorney,
Of Counsel.

C. W. GORHAM, PUBLIC PRINTER.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 226.

HENRY W. URQUHART,
as Sheriff of Lewis County,
Washington,

Appellant.

v.

THOMAS BROWN,

Respondent.

Appeal from the Circuit Court of the United States for the Western District of Washington.

STATEMENT OF THE CASE.

The respondent was tried before a jury of the Superior Court of the State of Washington in and for Lewis County, upon an information charging him with the crime of murder. The respondent pleaded not guilty, and urged in his defense insanity caused by epilepsy, cruel treatment by his father and the degeneracy of the latter, prior to the birth of the respondent; he offered proof during the trial of continuous and permanent insanity from said cause and his demeanor during the trial appeared to be consistent with his claim of general insanity. The trial resulted in a verdict of acquittal "by reason of insanity." (Record, page 6.)

Section 6959 of Ballinger's Codes and Statutes of Washington provides as follows:

"When any person indicted or informed against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the Court manifestly dangerous to the peace and safety of the community, the Court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds, with surety to the satisfaction of the Court, conditioned that he shall be well and securely kept, otherwise he shall be discharged."

Acting in pursuance of this statute, the Superior Court of Lewis County then ordered the committment of the respondent to the county jail of Lewis County, until the further order of the Court.

The respondent, having been reincarcerated in jail pursuant to the order of the Court, applied to the Supreme Court of the State of Washington for discharge from imprisonment by a writ of habeas corpus. The Supreme Court, finding no constitutional objections to the statute, denied the writ. (Record, page 11.)

The respondent thereafter applied to the Circuit Court of the United States for the Western District of Washington for a writ of habeas corpus, alleging in his petition that he was detained in prison by virtue of the above quoted statute, and that the same was unconstitutional and in violation of the fourteenth amendment to the Constitution of the United States, particularly to that portion thereof which provides that "nor shall the state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

The appellant demurred and then answered to the petition, setting up the facts stated above.

The cause was heard upon the petition, the demurrer and answer, and the Circuit Court granted the writ of habeas corpus, filing a written opinion in the case. (Record, page 16.)

ASSIGNMENTS OF ERROR.

I.

That the Court erred in finding that the complainant was unlawfully or illegally restrained of his liberty by the respondent, Henry W. Urquhart, as Sheriff of Lewis County, Washington.

II.

That the Court erred in finding that the order of committment of the Superior Court of Lewis County, Washington, under which the complainant was committed and held, was void and illegal.

III.

That the Court erred in ordering and decreeing that the complainant be freed and released from the county jail of Lewis County, Washington, and from the custody of the respondent

ARGUMENT.

The above assignments of error will be argued as one because the only question in the case is as to whether or not the statute referred to above is constitutional. The learned judge below, by giving the statute in question a different construction than that given it by the Supreme Court of the State of Washingon, holds the statute constitutional, but directed the liberation of the prisoner upon the ground that the Superior Court had not strictly followed the provisions of the law cited. But it should be remembered that it is the duty of the Federal Courts, in interpreting a state statute, to construe it as settled by the court of last resort of the state, and will only form an independent judgment as to the meaning of the state law, when there is no binding construction of such statute by the court of last resort of the state.

Sioux City Terminal & Warehouse Co. v. Trust Co., 173 U. S. 99.

Noble v. Georgia, 168 U. S. 398.

First Nat. Bank v. Chehalis Co., 166 U. S. 440.

Morley v. Railway Co., 146 U. S. 166.

As the statute in question was construed in the highest court of the State of Washington in the case of *In the Matter of the Appplcation of Thomas Brown for a Writ of Habeas Corpus*, 39 Washington 160, the court below was bound to consider such construction as an integral part of the statute, and had no jurisdiction to adjudge whether or not the construction placed upon the statute by the state court was right. Its sole duty was to decide whether or not the statute as construed by the Supreme Court of the State was constitutional. By ordering the respondent released from the custody of the appellant, the lower court, in effect, held the statute to be unconstitutional.

So the issue before the Court is simply whether or not the statute as construed by the Supreme Court of the State of Washington is constitutional. It is claimed by the respondent that it is unconstitutional in that it denies him due process of law.

The first inquiry would naturally be, what is "due process of law." It has been generally held to be a synonymous term with "the law of the land," which was defined by Mr. Webster in his argument in the case of *Dartmouth College v. Woodward*, 4 Wheaton 518, as:

"By the law of the land is most clearly intended the general law, a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial."

In the light of the above definition in what way has the respondent been deprived of the due process of law? Was respondent not heard before he was condemned? Was there not an inquiry and trial before judgment? We contend that there were, and that the statute violates none of the constitutional rights of the respondent. At the trial of respondent for the murder of his father, he pleaded, in defense of the crime for which he was being tried, permanent insanity, produced and caused by epilepsy, degeneracy of his father, and cruel and abusive treatment. That is, the respondent tendered, and there was submitted to the jury, under proper instructions of the Court, the question of his sanity, and upon that question he was heard as fully and completely as it was possible for a person to be heard. Witnesses were sworn, the jury was instructed, and under the law a special verdict upon that particular issue was determined. Now surely the fact that the statute permits the issue of sanity to be tried at the same time as the issue of guilt, does not render the statute unconstitutional or deprive the respondent of due process of law. He was given all the rights and privileges that he would have had, or could lawfully have demanded, upon a separate trial of the issue of sanity. He was accorded a jury to try his sanity, had the opportunity to confront and cross-examine, the opportunity to adduce testimony in his own behalf and to testify himself if he saw fit. Even the respond-

ent will not deny the state's right to protect itself from the acts of an insane person, or to protect the insane person from his own acts, by incarcerating such person in a hospital or prison. It is only requisite that the person be adjudged insane by a court of competent jurisdiction, after a trial according to the regular forms of law, where the accused person had an opportunity to appear and make a defense. It cannot be denied that the statute in question provides the most logical method of trial when insanity is urged in defense of crime because the issues are so interdependent that they should be tried together; either the prisoner is sane and guilty of the crime, or insane and a fit subject for the state's guardianship.

The respondent urged most strenuously in the court below that the respondent was denied due process of law because the jury's finding that he was insane must have had reference to the time when he killed his father, while the order of committment was not signed until four months after the murder. In other words, his contention is that his mental condition may have changed in the interval between the date of the offense and the date of the trial, and that therefore a finding that he was insane when he committed the offense was no proof that he was insane when committed to prison. In this connection it should be remembered that nowhere in his petition does the respondent claim that he is now sane. He practically admits that his mental condition has not changed since he alleged, and the jury found, that he was insane; but simply contends that he was committed to prison by the wrong process.

The fallacy of respondent's position is his assumption that insanity is not presumed to be a continuous state. It is well settled that when a person is once found to be habitually insane, the burden is upon such person to prove his restoration to a sane condition, for insanity is presumed to continue until the contrary is shown.

"The presumption being that general insanity once shown to exist still continues unless of a temporary sort, like the delirium of drunkenness or a fever, the burden of proof to establish a lucid interval or mental restoration rests upon the party who asserts it." Schouler on Wills (3d ed.), Sec. 189 and cases cited.

The American & English Encyclopedia of Law (2d ed.), at page 604 of volume 16, states the rule as follows:

"When habitaual insanity in the mind of the person whose act is in question is once established, then the party who would take advantage of the fact or restoration to a sane condition, or an interval of reason, must prove it, for insanity of that character is presumed to continue until the contrary is shown."

Decisions from twenty-six of the American states are cited in support of the above rule, as well as a long list of English decisions.

The law being that a person who has once been found to be permanently insane is presumed to continue so until the contrary is shown, the burden is upon respondent to prove that he has recovered his reason. The record shows that the proof offered at the trial was of continuous and permanent insanity, induced by epilepsy and congential conditions. The solemn verdict of the jury upon this testimony was that the respondent was insane. The Court simply entered a judgment that was in accordance with the verdict of the jury. No contention is made by the respondent that his mental condition has changed since the date of the murder. No change having been shown to have occurred in his mental condition, the Court was fully justified in committing him to prison until restoration to sanity.

Respondent further complains that he was deprived of due process of law because he was committed "until the further order of the Court." He asserts that the order of commitment was bad because he was not committed for a definite and certain time.

It needs no citation of authorities to sustain the contention that a commitment of an insane person for a definite period would be contrary to law. The very necessity of the case requires that the commitment should be for an indefinite length of time. The commitment of an insane person to a hospital or prison is not a punishment

for crime, but is simply the state's exercise of its right to protect itself against the acts of an irresponsible person. As soon as the person recovers his sanity the state's right of guardianship over him should cease and he is entitled to be restored to his liberty. It will be readily seen that a commitment for an indefinite period is the only practicable method of dealing with the insane. When committed "until the further order of the Court," the prisoner or patient has the right at any time to come into Court, assert his sanity, have the issue tried, and if found sane, be discharged.

"If it be allowable to assume that the insanity found to exist at one time still continues, and on that ground to commit the party to an asylum as presumptively insane, still the supposed non compos would have a right to disprove this presumption at any time. To deny him the right to have his case investigated on the facts at any time, would be to distinguish his case from that of other insane persons; and this must be justified on legal ground. It certainly would not be justified on the ground that the jury had rendered an improper verdict; the verdict must be taken as correct. But as no other ground can possibly be suggested, it must follow that the restraint of liberty, though based upon a verdict which found the existence of insanity, must be made to cease whenever a judicial investigation, which is a matter of right, shall determine that insanity does not exist. It is not possible constitutionally to provide that one shall be imprisoned as an insane person who can show that he is not insane at all." Cooley on Torts (2d ed.), note to star page 178.

The cases upon the point in issue are very few; whether it is because there are few similar statutes or whether it is because most men acquitted of murder by reason of insanity are willing to suffer a short imprisonment as insane is not material.

The case most relied upon by the respondent in the court below was that of *Underwood v. People*, 32 Mich. 1, but a reading of the case discloses the fact that the decision of the Court turned upon a peculiar feature in the Michigan statute. The statute provided that one acquitted of crime by reason of insanity should remain confined in an asylum until an investigation as to his restoration to sanity should be set in motion by the prison inspectors. The Su-

preme Court of Michigan held the statute to be unconstitutional upon the ground that:

"The proceedings contemplated by it are not only inquisitorial and *ex parte*, but they cannot be set in motion except at the will of the prison inspectors, so that practically the liberty of the person confined is left to depend upon the uncontrolled pleasure of the inspectors."

It will readily be seen that this case has no bearing upon the question at issue here, as our statute makes no attempt to prevent the person confined from initiating a judicial investigation as to his restoration to sanity.

The following citations show conclusively that the statute in question does not deny the respondent due process of law:

"Where a person is acquitted by the verdict of the jury on the ground of insanity, the Federal Court will remand him to the custody of the marshal, on being satisfied that it would be dangerous to permit him to be at large while under mental delusion."

United States v. Lawrence, Federal Cases, No. 15,577 (4 Cranch C. C. 518).

"Where one having committed a homicide had been sent to the house of correction pursuant to the statute of 1797 (Chapter 61, section 3), as a person dangerous to go at large, and was then tried for murder, and acquitted on the ground of insanity, the Court remanded him to the house of correction until he should be duly discharged."

Commonwealth v. Meriam, 7 Mass. 168.

"Where one charged with a misdemeanor is acquitted upon the ground of insanity, an order committing him to an insane asylum is not a sentence; and it is competent for the Court to certify his last place of legal settlement, after the expiration of the term at which such order was made."

Clearfield County v. Cameron Township Poor District, 135 Pa. St. 86, 19 Atl. Rep. 952.

With the right of the relator at any time to petition the court to make an order for the review of the question of his sanity, and the right to have the question of the restoration of his mind and

reason tried, it cannot be contended that the judgment entered here by the Superior Court amounts to a perpetual imprisonment. If the relator were to enter a proceeding to establish the restoration of his mind and reason and the lower Court should find against him he would have the right of appeal, and with this right of hearing and right of review it cannot be said that the statute does not afford an opportunity of showing mental restoration.

We respectfully submit that the judgment of the lower Court should be reversed.

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Supreme Court of the United States.

No. 226.—October Term, 1906.

Henry W. Urquhart, as Sheriff of Lewis County, Washington, Appellant, vs. Thomas Brown. } Appeal from the Circuit Court of the United States for the Western District of Washington.

[March 18th 1907.]

Mr. Justice Harlan delivered the opinion of the Court.

This appellee Brown was charged in the Superior Court of Lewis County, Washington, with the crime of murder and was acquitted. The verdict of the jury was: "We, the jury, find the defendant not guilty, by reason of insanity."

The verdict having been entered of record, an order was made which recited that the court by reason of the verdict, the evidence, the proceedings in the trial and the demeanor of the defendant, "finds that the discharge or going at large of said Thomas Brown would be and is considered by the court as manifestly dangerous to the peace and safety of the community"; also, that he be committed to the county jail until the further order of the court.

In making this order the court acted on the authority of a statute of Washington, as follows: "When any person indicted or informed against for an offense shall, on trial, be acquitted by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the Court manifestly dangerous to the peace and safety of the community, the Court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds, with surety to the satisfaction of the Court, conditioned that he shall be well and securely kept, otherwise he shall be discharged." *Bal. Code*, § 6959.

Subsequently, the accused being in the custody of the Sheriff under the above order, made an original application to the Supreme Court of Washington on the 13th day of June 1905 for a writ of *habeas corpus*, alleging that he was unlawfully detained and imprisoned, in that the statute under which he was held was in violation of both the Fourteenth Amendment of the Constitution of the United States and of the Constitution of the State.

The Supreme Court of Washington, by its final judgment entered July 14th 1905, held that the statute was constitutional, and that the order of the trial court was in strict conformity with its provisions. *In re Brown*, 39 *Wash.* 160; 81 *Pac.* 552. That court accordingly denied his application to be discharged. The appellee then, on July 18th 1905, made application to the Circuit Court of the United States for the Western District of Washington for a writ of *habeas corpus*. In his answer to this application the Sheriff, having the appellee in custody, referred to the proceedings in the Supreme Court of the State, and alleged that the mental condition or capacity of the applicant was in no wise different or improved than it was on the 23d of December 1904, at the time he killed his father. That court granted the writ and the case being heard, the court by its final order entered January 10th 1906, discharged the appellee from custody. The Circuit Judge held that the statute, although constitutional, was not properly administered by the Superior Court in rendering its judgment, and that the imprisonment of the petitioner with sanction of the judiciary o the State, without arraignment, and a fair opportunity to defend himself against charges lawfully preferred, and to produce evidence in his defense was a deprivation of his liberty by the State, without due process of law, and violated the national Constitution; and for that reason the application for the writ of *habeas corpus* was granted. *Brown* v. *Urquhart*, 139 *Fed. Rep.* 846.

The order of commitment under which the appellee was held was adjudged by the Circuit Court to be illegal and void but the judgment was without prejudice to any lawful proceeding to have the prisoner restrained, if he should be adjudged to be a dangerous person by reason of insanity. From that judgment the present appeal was prosecuted.

It is the settled doctrine of this court that although the Circuit Courts of the United States, and the several justices and judges thereof, have authority, under existing statutes, to discharge, upon *habeas corpus*, one held in custody by State authority in violation of the Constitution or of any treaty or law of the United States, the court, justice or judge has a discretion as to the time and mode in which the power so conferred shall be exerted; and that in view of the relations existing, under our system of government, between the judicial tribunals of the Union and of the several States, a Federal court or a Federal judge will not ordinarily interfere by *habeas corpus* with the regular course of procedure under State authority, but will leave the applicant for the writ of *habeas corpus* to exhaust the remedies afforded by the State for determining whether he is illegally restrained of his liberty. After the highest court of the State, competent under the State law to dispose of the matter, has finally acted, the case can be brought

to this court for re-examination. The exceptional cases in which a Federal court or judge may sometimes appropriately interfere by *habeas corpus* in advance of final action by the authorities of the State are those of great urgency that require to be promptly disposed of, such, for instance, as cases "involving the authority and operations of the General Government, or the obligations of this country to, or its relations with, foreign nations." The present case is not within any of the exceptions recognized in our former decisions. If the applicant felt that the decision, upon *habeas corpus*, in the Supreme Court of the State was in violation of his rights under the Constitution or laws of the United States, he could have brought the case by writ of error directly from that court to this court.* In *Reid* v. *Jones*, 187 *U. S.* 153, it was said that one convicted for an alleged violation of the criminal statutes of a State, and who contended that he was held in violation of the Constitution of the United States, "must ordinarily first take his case to the highest court of the State, in which the judgment could be reviewed, and thence bring it, if unsuccessful there, to this court by writ of error; that only in certain exceptional cases, of which the present is not one, will a Circuit Court of the United States, or this court upon appeal from a Circuit Court, intervene by writ of *habeas corpus* in advance of the final action by the highest court of the State." So, in the recent case of *Drury* v. *Lewis*, 200 *U. S.* 1, it was said that in cases of the custody by State authorities of one charged with crime the settled and proper procedure was for a Circuit Court of the United States not to interfere by *habeas corpus*, "unless in cases of peculiar urgency, and that instead of discharging they will leave the prisoner to be dealt with by the courts of the State; that after a final determination of the case by the State court, the Federal courts will even then generally leave the petitioner to his remedy by writ of error from this court. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal courts by which a person under an indictment in a State court and subject to its laws may, by the decision of a single judge of the Federal court, upon a writ of *habeas corpus*, be taken out of the custody of the officers of the State and finally discharged therefrom."

Without now expressing any opinion as to the constitutionality of the statute in question, or as to the mode in which it was administered in the

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* Ex parte Royall, 117 U. S. 241, 251; Ex parte Fonda, 117 U. S. 516; New York *v.* Eno, 155 U. S. 89; In re Wood, 140 U. S. 278; In re Frederich, 149 U. S. 70; Pepke *v.* Cronan, 155 U. S. 100; In re Chapman, 156 U. S. 211; Whitten *v.* Tomlinson, 160 U. S. 231; Baker *v.* Grice, 169 U. S. 284; Tinsley *v.* Anderson, 171 U. S. 101, 104; Markuson *v.* Boucher, 175 U. S. 184; Minnesota *v.* Brundage, 180 U. S. 499; Riggins *v.* United States, 199 U. S. 547; In re Lincoln, 202 U. S. 178.

State court, for the reasons stated the judgment of the Circuit Court must be reversed, with directions to set aside the order discharging the appellee, and to enter an order denying the application for a writ of *habeas corpus*, leaving the appellee in the custody of the State, with liberty to apply for a writ of error to review the above judgment of the Supreme Court of Washington.

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.